

DELBERT WHEELER,	:	Order Vacating Decision and Remanding
d.b.a. WHEELER LOGGING,	:	Case
Appellant	:	
	:	
v.	:	Docket No. IBIA 00-36-A
	:	
NORTHWEST REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 22, 2000

Appellant Delbert Wheeler, d.b.a. Wheeler Logging, sought review of a November 19, 1999, decision of the Northwest Regional Director (formerly Portland Area Director), Bureau of Indian Affairs (Regional Director; BIA), issuing Sand and Gravel Permit 3-2-0085-9924 on Yakama Allotment No. V-179, to Pacific Northwest Aggregate, Inc. For the reasons discussed below, the Board of Indian Appeals (Board) concludes that this decision should be vacated and the case remanded to the Regional Director for further consideration.

On February 23, 2000, the Board received a motion from the Regional Director in which he asked the Board to place his decision into immediate effect or, alternatively, to expedite consideration of the appeal. Appellant responded to the Regional Director's motion on March 6, 2000.

On March 6, 2000, the Board also received a motion to intervene in this case from Casey Barney, Edna Barney, Josephine Barney, Delores Barney, Christine Barney, Earl Barney, Shirley Barney, and Arnold Barney (Movants). Movants state that they are the surviving children and undetermined heirs of Jessie Lena Hyipeer Barney (Decedent), who, at the time of her death, owned a 1/2 interest in Yakama Allotment No. V-179. They further state that a probate hearing was held in Decedent's estate, and assert that they will each take an interest in the allotment under the terms of Decedent's uncontested will. Movants submitted a copy of Decedent's will. They seek to intervene here in order to protect their interests in the allotment.

The Board contacted Administrative Law Judge William E. Hammett in order to determine the status of his consideration of Decedent's estate. Judge Hammett informed the Board that he expected to issue a decision shortly. On March 20, 2000, the Board received a copy of a March 15, 2000, order in which Judge Hammett determined Decedent's heirs and approved her will. Judge Hammett found that Movants were Decedent's heirs-at-law and were among

the devisees under her will. According to both Judge Hammett's order and the copy of Decedent's will submitted by Movants, Decedent's will did not specifically devise Yakama Allotment No. V-179. Therefore, it appears that the allotment passes to Movants in equal shares under the will's residuary clause.

The permit at issue here was signed by Arthur Sanchey, Charmaine Sanchey, and Jayson Umtuch, who together own 1/2 of the interest in the allotment. The permit does not have signature lines for any other owners. The Superintendent, Yakama Agency, BIA, approved the permit on August 19, 1999. From the Board's initial review of the administrative record, it is not totally clear, but appears likely, that the Superintendent signed the permit on behalf of the undetermined heirs of Decedent's estate under his authority in 25 C.F.R. § 162.2(a)(3).

Under the circumstances of this case, in which the Regional Director's decision has not taken effect because of the stay provisions of 25 C.F.R. § 2.6(a) and 43 C.F.R. 4.314(a), and in which the owners of 1/2 of the interests in the allotment have been determined during the pendency of the appeal, 1/ the Board believes that the most prudent course of action is for it to vacate the Regional Director's decision and remand this case to him for further consideration with the involvement of all of the owners.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Northwest Regional Director's November 19, 1999, decision is vacated, and this matter is remanded to him for further consideration. In view of this disposition, all pending motions are denied.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

1/ Judge Hammett's decision will not be final for the Department of the Interior until the passage of the 60-day time period established in 43 C.F.R. § 4.241(a) for the filing of a petition for rehearing. Based on the Judge's decision, it appears that there was no controversy at the initial probate hearing, so that the likelihood of the filing of a petition for rehearing is not great. Furthermore, the Regional Director has indicated that there is a need to expedite the final resolution of this matter. In order to attempt to resolve this matter as quickly as possible, the Board is willing to accept the slight risk that a petition for rehearing might be filed in Decedent's estate.